

## REMARKS

The Examiner's marks have been carefully considered and the prior patents cited and applied have been carefully studied.

Reconsideration of the Examiner's interpretation of the word "integral" in the claims is respectfully requested. The word "integral" which refers to the orienting means (keys 57) clearly means that it is one piece with the vial. This is clearly shown in the drawings. Hence, the meaning of the word "integral" in the claim is clear that it means one piece with the vial. Moreover *The Random House Dictionary of the English Language (Second Edition) Unabridged* unequivocally defines "integral" as "pertaining to, or belonging as a part of the whole; constituent or component; integral parts". A copy of the title page and the page of the dictionary where the definition of "integral" appears is attached hereto for the Examiner's convenience. Hence, it is clear that the word "integral" with respect to the orienting means (keys 57) in the claims means that the orienting means are one piece with the vial. Hence, it is respectfully requested that Examiner's interpretation of the meaning of the word "integral" be reconsidered and withdrawn.

In any event, in accordance with the Examiner's request, Applicant has amended the specification (i.e. the paragraph bridging page 8 and 9) to include the fact that the keys 57 are integral with i.e. one piece with the vial. This structure is clearly shown in the drawings of the application as filed.

Claims 1, 8 and 35 have been amended without any intention of acquiescing to the pertinency of the prior patents but rather to more clearly define applicant's invention and to eliminate possible ambiguities.

Claims 1, 8-11, 13, 20-25 and 35-45 are presently in this application. Claims 9-11, 13, 20-25 and 43-45 stand allowed.

Reconsideration of rejection of the claims 1-8 and 35-42 is respectfully requested.

Claims 1-8 are directed to a vial having an outer straight wall and an inner curved wall. Orienting means are provided which are integral and one piece with the vial as clearly shown in the drawing and as more fully explained in the specification. The orienting means permits the vial to be positioned in a level in the proper position. Since the outer wall of the vial is straight, without the orienting means the inner curved cavity may not be placed in the level in the correct positional orientation to give a proper reading.

Claims 35-42 are directed to the method of making a vial having a straight outer wall and an inner curved cavity both of which are formed simultaneously in one step. The Examiner will appreciate that first making the vial with a straight outer wall and therefore forming the inner cavity (by drilling or some other means) is expensive and time consuming. Applicant's invention permits a fast and inexpensive method of doing both simultaneously.

The claims in this application, as amended, are now directed to the structure and method described above which is not shown in any of the prior patents either alone or in combination with each other.

*Johannson Sweden No. 148,436* shows a vial with an outer straight wall and an inner curved cavity. However, this patent does not disclose any orienting means nor does it disclose any method of making the vial. Hence, this patent does not anticipate.

*Johnson 3,750,301* shows a vial having a curved outer wall and a curved inner cavity.

The vial is removably placed in a holder 4 which is a separate piece and is not integral and one

piece with the vial. Moreover, the holder 4 is not adapted to act on orienting means for the vial.

The holder 4 merely holds the vial in place. There is nothing disclosed in this patent to indicate

that this holder is an orienting device. It is merely a holder. It is possible to position the vial

within holder 4 in any orientation. The position of the vial within the holder may be mistakenly

or accidentally rotated within the holder into different orientational positions with respect to the

level. This would make such a level inoperative. This erroneous orientation is not possible with

the orienting means of the present invention. In applicant's structure the vial is oriented properly

by the orienting means which are integral, i.e. one piece, with the vial. With these orienting

means, applicant's vial can only be placed in one position and cannot be accidentally or

mistakenly assembled or rotated. In addition, this patent does disclose any method of making a

vial with a straight outer wall and a curved inner cavity. Hence, this patent does not anticipate

applicant's invention.

*Gruetzmacher et al 2002-0056203A1* shows a molding method for molding a vial having both a curved outer surface and a curved inner surface. This publication does not disclose the formation of a vial with a straight outer wall and a curved inner cavity simultaneously and in one step. Also this patent does not disclose a vial with any orienting means. Hence, this patent does not anticipate.

The Examiner has suggested the combination of *Johannson* with *Johnson* and *Gruetzmacher* and has rejected the claims as being rendered obvious by the combined references. Applicant submits that even when combined the resulting structure and method would still be different from applicant's invention and would not render applicant's invention obvious.

With respect to claims 1 and 8, the resulting structure and combination of references supported by the Examiner would still lack a vial having an orienting means (preferably in the form of a tab) which is integral and one piece with the vial. As indicated above, *Johnson* merely shows a holder 4 in which the vial is placed --- it is not an orienting device. Even if combined with the other two references the resulting structure would still have a vial is merely placed in a holder from which it is separate and removable. The holder in Johnson would not prevent

accidental rotation or erroneous positioning of the vial within the holder which would make the level in operative. This is quite different from applicant's structure which comprise a vial having an integral orienting means. Hence, the suggested combination of references would not render applicant's invention, as set forth in claim 1 and 8, obvious.

With respect to claims 35-43, the resulting method of the combined references would still lack the simultaneous formation in one step of a vial having an outer straight cylindrical configuration and an inner curved cavity. Nothing in the cited references, including the *Greutzmacher* patent, discloses this method. All that *Greutzmacher* discloses is the formation of a vial having a curved outer surface and a curved inner cavity. The patents to *Johnson* and *Johanson* do not disclose any method of making the vial whatsoever. The Examiner states that the method steps would be met during the normal manufacturing process of "the combination stated above". However, all that the combination of references disclose is the formation of the vial having a curved outer surface and a curved inner cavity. Nothing in the cited references discloses or suggests the formation of a vial with an outer straight surface and a curved inner cavity in a single simultaneous step. Hence, the suggested combination of references would not

render applicant's invention as set forth in claims 35-43 obvious.

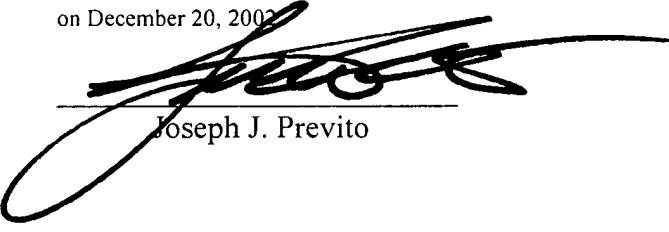
Since none of the prior patents either alone or in combination with each other neither

render applicant's invention obvious nor anticipate applicant's invention, allowance of the

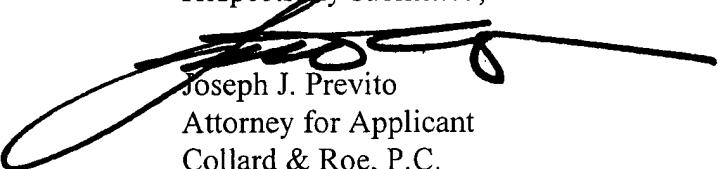
application is respectfully requested.

Dated: December 20, 2002

I hereby certify that this correspondence is  
being deposited with the United States Postal  
Service as First Class Mail in an envelope  
addressed to: Commissioner of Patents  
and Trademarks, Washington, D.C. 20231,  
on December 20, 2002.

  
Joseph J. Previto

Respectfully submitted,

  
Joseph J. Previto  
Attorney for Applicant  
Collard & Roe, P.C.  
1077 Northern Boulevard  
Roslyn, New York 11576  
(516) 869-5950



MARKED UP COPY OF PARAGRAPH BRIDGING PAGES 8 & 9 SHOWING CHANGES  
MADE

In the embodiment shown Figs. 6-11, the vial 1 is provided with a pair of keys 57 which are preferably integral with (i.e. one piece) and extend [extending] outwardly from one end (preferably the open end 6) of the vial 1 and in opposite direction from each other. The keys 57 have straight edge and side walls 58 and 59 tangent to the outer circular with 3 of the vial 1 and at right angles to each other. The side walls 59 are parallel to a plane tangent to the apex of 8. Since the notches 54 in the level which receive the vial are square, by placing the keys 57 against the outer side edges 55-56 of one of the notches 54 the vial is automatically oriented in the correct position with the apex 8 of the curved inner cavity 4 to be closest to one of the outer rails 52 i.e. a plane tangent to the apex 8 is parallel to the rails 52. When assembled in this matter, the vial 1 automatically will assume the proper orientation in the carpenter level without the necessity of using precision tools.

MARKED UP COPY OF CLAIMS 1, 8 AND 35 SHOWING CHANGES MADE

1. (Twice Amended) A vial for a level, said vial comprising an outer wall, said outer wall being straight and cylindrical, an inner cavity, said inner cavity being curved, said inner cavity being curved in a substantially uniform arc having an apex, opposed ends spaced from the apex and opposed spaced sides, planes tangent to said opposed spaced sides are at an angle of 90 degrees from the apex, the apex of the curved inner cavity being closer to the cylindrical outer wall of the vial than the opposed ends of the inner cavity, said inner cavity is substantially uniform in cross section throughout its length, planes tangent to the sides of the cavity are parallel to each other and at right angles to a plane tangent to said apex, one end of said cavity terminates in an end wall perpendicular to the said outer wall, said end wall having inner and outer faces parallel to each other, the other end of said cavity is open and wherein a cap is adapted to close the said open end, and orienting means which extend from and are integral and one piece with said outer walls to permit proper orientation and mounting of the vial in a level.

8. (Twice Amended) The vial as set forth in claim 1 wherein said orienting means comprise a pair of keys which extend from and are integral and one piece with the outer wall of said vial adjacent said open end, said keys extending in opposite directions from each other.

35. (Amended) A method of making a vial having an outer wall and an inner cavity comprising the steps of forming the outer wall in a straight cylindrical configuration, forming the inner cavity of the vial in a curve, said inner curved cavity and the outer straight cylindrical wall being formed simultaneously in a single step.